



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

ORIGINAL

EX PARTE OR LATE FILED

August 25, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Implementation of the
Local Competition Provisions in the
Telecommunications Act of 1996, GC Docket No.
96-98

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Dear Secretary Salas:

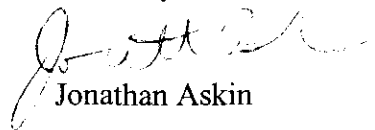
AUG 25 1999

Please include the attached written ex parte communication to Lawrence E. Sticklin,
Chief, Common Carrier Bureau in the public file of the above-referenced proceeding.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

If you have any questions, please contact the undersigned at (202) 969-2597.

Sincerely,



Jonathan Askin

cc: Carol Matthey
Margaret Egler
Claudia Fox
Jake Jennings
Sanford Williams
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA FACSIMILE

Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Written *Ex Parte* Presentation by the
Association for Local Telecommunications Services**

***Implementation of the Local Competition Provisions in the Telecommunications
Act of 1996 (UNE Remand) – CC Docket No. 96-98***

Dear Mr. Strickling:

On August 9 and August 11, BellSouth and SBC, respectively (collectively, the "Bells"), filed *ex parte* submissions in which they effectively asked the Commission to impose restrictions on the use of extended link UNEs or UNE combinations so that they cannot be used solely to "bypass" ILEC access services.¹ While it is unclear which services the Bells intend to include in the concept of bypass, what remains clear is that Section 251, as the Commission previously has found, contains no basis for the imposition of restrictions on the use of UNEs.² Indeed, Section 251(c) contains no

¹ Letter from William Barfield to Lawrence Strickling ("*BellSouth Ex Parte*"), CC Docket No. 96-98, Aug. 9, 1999; Letter from Martin Grambow to Lawrence Strickling ("*SBC Ex Parte*"), CC Docket No. 96-98, Aug. 11, 1999.

² See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, ¶¶ 27, 264, 356.

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restriction on the types of telecommunications services that UNEs (whether provided individually or in combination) can be used to provide.

ALTS respectfully submits that the various rationales concocted by the Bells to support restrictions on the use of extended links lack merit. Indeed, the Bells' claim that "[t]he Communications Act and Commission decisions therefore permit incumbent LECs to protect the interstate access charge regime and universal service through conditions on the use of unbundled network elements"³ is flatly wrong. As an initial matter, this contention runs afoul of at least two Commission rules addressing the ILECs' unbundling obligations. Rule 51.309(a) explicitly states that:

An incumbent LEC *shall not* impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.⁴

Rule 51.307(c) states that:

An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier *to provide any telecommunications service that can be offered by means of that network element*.⁵

Neither SBC nor BellSouth attempts to explain how their arguments are consistent with these Commission rules or why such rules – which are not implicated in this UNE remand proceeding – should be overturned.

Contrary to the Bells' assertions, neither Section 251(c)(3) nor Section 251(g) authorizes or contemplates restrictions on the use of UNEs. The only *use* restriction evident in Section 251(c)(3) is that UNEs must be used to provide telecommunications services. Moreover, Section 251(c)(3)'s mandate that ILECs must make UNEs available "on terms, rates and conditions that are just, reasonable and nondiscriminatory" does not confer on ILECs the authority to impose any restrictions; rather, those restrictions must be "just, reasonable and nondiscriminatory" and "in

³ *SBC Ex Parte*, Attachment at 1.

⁴ 47 C.F.R. §51.309(a).

⁵ 47 C.F.R. §51.307(c).



accordance with . . . the requirements of this section and section 252.”⁶ Thus, Section 251(c)(3) cannot be read to permit ILEC restrictions that are inconsistent with rules adopted by the Commission to implement that section.

Similarly, Section 251(g) cannot bear the weight placed on it by SBC. Any reasonable interpretation of Section 251(g) makes clear that it does not authorize the protection of access charge revenues to ensure that such revenues are not replaced with unbundling revenues. Nevertheless, the extended link arrangements targeted by the ILECs should not (as the ILECs apparently have us believe) have a substantial impact on existing ILEC cross-service subsidies or universal service. First, because extended links resemble special access, rather than switched access services, short-term implicit universal service subsidies are not likely to be affected in a significant way. It is ALTS’ understanding that special access revenues are not relied upon for implicit universal service subsidies. Second, ALTS believes that it is highly unlikely that extended link arrangements could be used to replace special access services which account for significant revenues used for cross-service contributions and subsidies (an issue related but nevertheless distinct from universal service). The Bells themselves contend that these services are highly competitive.⁷ Accordingly, competitive pressures should be driving special access rates down toward average variable cost. Indeed, ILECs this month won special access pricing flexibility based on largely on their arguments that downward pricing flexibility was needed to respond to competition. Rates subject to such downward pressure and pricing flexibility cannot reasonably be relied upon to provide extraordinary cross-service contributions. Moreover, TELRIC-based rates for extended link arrangements will continue to provide a reasonable profit, including a contribution to joint and common costs. In contrast, it does not appear that special access pricing flexibility assures any contribution.

In sum, neither BellSouth nor SBC has provided a coherent legal or policy rationale in support of the imposition of use restrictions on extended links or other UNEs or UNE combinations. Nevertheless, the Bells’ efforts underscore the need for the Commission to explicitly proscribe all attempts to place use restrictions on UNEs. In particular, such affirmative action by the Commission should include, but not be limited to, the following pronouncements:

- UNEs may be used to provide intrastate and/or interstate services, including Internet access services and advanced services such as DSL and frame relay.
- Extended link UNEs or UNE combinations may be composed of any technically feasible loop and transport configuration, including appropriate multiplexing/aggregation/routing equipment and cross-connects. Such configurations may include 2- and 4-wire analog and digital, xDSL-capable, xDSL-equipped (where appropriate) loops, as well as high

⁶ 47 U.S.C. § 251(c)(3).

⁷ *BellSouth Ex Parte*, at 2; *SBC Ex Parte*, at 6.



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capacity DS1, DS3 and OCn loops, and DS0, DS1, DS3, OCn and SONET transport. The availability of extended link configurations is not dependent on the jurisdictional nature of the service the CLEC seeks to provide.

ALTS appreciates this opportunity to participate in the Commission's UNE Remand proceeding and the extraordinary efforts undertaken by the Commission and the Common Carrier Bureau to ensure that the outcome of this proceeding best serves to advance local competition, as intended by and provided for in the 1996 Act. If further explanation of the positions taken herein, or in any of ALTS other filings, is necessary, please do not hesitate to contact me at 202/969-2597 or John Heitmann at 202/955-9888.

Respectfully submitted,

Jonathan Askin
Vice President - Law

cc: Carol Matthey
Margaret Egler
Claudia Fox
Jake Jennings
Sanford Williams